required to avoid negligence depend in each case on what precautions an ordinary prudent man would take under the circumstances. *Tudor* v. *Bowen* (1910) 152 N. C. 441, 67 S. E. 1015; *O'Brien* v. *New York* (App. Div. 1919) 174 N. Y. Supp. 116. Instead of aiding a jury to determine whether the conduct complained of was negligent, such a classification obscures this simple and workable rule, and gives the juror the false impression that certain undertakings require the exercise of a peculiarly high degree of care because of the nature of those enterprises and not of the danger involved. See *Magrane* v. *St. Louis etc. Ry.* (1904) 183 Mo. 119, 81 S. W. 1158; *Steamboat New World* v. *King, supra;* but see *Denver Electric Co.* v. *Simpson* (1895) 21 Colo. 371, 41 Pac. 499. The modern tendency, as illustrated by the instant case, is to regard as prejudicial any charge based on a classification of care into degrees and to adopt as the sole test of care what a reasonably prudent man would exercise under the circumstances. *O'Brien* v. *New York, supra;* see *Magrane* v. *St. Louis etc. Ry., supra; Pomroy* v. *Bangor & Aroostook R. R.* (1907) 102 Me. 497, 67 Atl. 561; *Denver & Rio Grande R. R.* v. *Peterson* (1902) 30 Colo. 77, 69 Pac. 578.

PRINCIPAL AND AGENT—BROKERS—"EXCLUSIVE SALE OF"—SALE BY OWNER.—The owner of real estate entered into a written agreement whereby he "gave to" a broker the "exclusive sale of" his farm upon specified terms, for a definite period. Before the expiration of that period, the owner, without knowledge of the broker's activities, sold the land at a price lower than that specified, to a party upon whom the broker had incurred expense in trying to interest in the purchase. The broker sued for commissions. *Held,* he could not recover since the giving of the right of "exclusive sale" meant the "right of exclusive agency" and did not deprive the owner of his right of disposal. *Roberts* v. *Harrington* (Wis. 1918) 169 N. W. 603.

Where an agency is created for the sale of land, the owner retains the right to dispose of it himself, unless clearly deprived thereof by the contract. *McPike* v. *Silver* (1914) 168 Iowa 149, 150 N. W. 52; *cf. Blumenthal* v. *Bridges* (1909) 91 Ark. 212, 120 S. W. 974. An "exclusive agency to sell" is construed to mean that no other agent will be employed, and not that the principal is deprived of the right of sale. *Dole* v. *Sherwood* (1890) 41 Minn. 535, 43 N. W. 569; see *Aluminum Products Co.* v. *Anderson* (1917) 138 Minn. 142, 164 N. W. 663. The courts construe "exclusive right to sell", however, to bar the owner's right of disposal where it is clear that the owner had made a promise to that effect, *Stringfellow* v. *Powers* (1893) 4 Tex. Civ. App. 199, 23 S. W. 313; see *Ingold* v. *Symonds* (1904) 125 Iowa 82, 85, 99 N. W. 713; but *cf. McPike* v. *Silver, supra,* and where the agent had paid a money consideration. *Fairchild* v. *Rogers* (1884) 32 Minn. 269, 20 N. W. 191. There was no money consideration paid by the agent in return for the promise of "exclusive sale" in the principal case and it is not clear that the stipulation was meant as a promise. If, as seems probable, an offer looking to a unilateral contract was meant, nothing was paid for keeping the offer open, and it could therefore be revoked at any time before acceptance. *Stensgaard* v. *Smith* (1890) 43 Minn. 11, 44 N. W. 669. It is thought that the court, reluctant to hold, as in some jurisdictions, that partial performance constituted acceptance, *Lapham* v. *Flint* (1902) 86 Minn. 376, 90 N. W. 780; *Goward* v. *Waters* (1868) 98 Mass. 596; and consequently being in doubt as to the

existence of a contract, was unwilling to conclude that the principal was by the writing deprived of his right of disposal. To escape the necessity of ruling on the partial performance point, it may well be that the words in question were construed so as to deny recovery to the plaintiff whether there was a contract or not.

REAL PROPERTY—PROFITS A PRENDRE—EXTINGUISHMENT BY NON-USER.—The owner of a farm conveyed part thereof, consisting of a slate quarry, to the plaintiff's predecessor in title, reserving to himself, his heirs and assigns, the right to take waste slate, when quarried, from the lot conveyed. The remainder of the farm was conveyed to the defendant's predecessor in title, who subsequently also acquired the right to remove the waste slate. Neither the defendant nor his predecessors in title had exercised their right for over thirty-three years. *Held,* two judges dissenting, that the right had been extinguished by abandonment. *Mathews Slate Co.* v. *Advance Industrial S. Co.* (App. Div. 3rd Dept. 1918) 172 N. Y. Supp. 830.

Where an easement or profit has been created by deed, the courts have generally held that mere non-user will not extinguish the right, *Welsh* v. *Taylor* (1892) 134 N. Y. 450, 31 N. E. 896; Bombaugh *v. Miller* (1876) 82 Pa. 203; *Arnold* v. *Stevens* (1839) 41 Mass. 106; such non-user serving only as evidence of intention to abandon. *Pratt* v. *Sweetser* (1878) 68 Me. 344; *Jamaica Pond Aqueduct* v. *Chandler* (1876) 121 Mass. 3. Some courts admit the general rule, but make a distinction between rights acquired by grant and those acquired by prescription, and suggest that in the latter case the right may be destroyed by non-user alone. *Pope* v. *O'Hara* (1872) 48 N. Y. 446, 452; *Hayford* v. *Spokesfield* (1868) 100 Mass. 491, 494. There seems little justification for this distinction, and the same rule should be applied in either case. *Pratt* v. *Sweetser, supra;* see *Veghte* v. *Raritan Water Power Co.* (1868) 19 N. J. Eq. 142, 156; *Jamaica Pond Aqueduct* v. *Chandler, supra.* Furthermore, even though it is frequently stated to be the law that an easement may be destroyed by abandonment where the intention to abandon is clearly manifested by some act of the dominant owner, the courts have generally required a change of position on the part of the servient owner in reliance thereon, before they would find that there had, in fact, been an abandonment. *Snell* v. *Levitt* (1888) 110 N. Y. 595, 18 N. E. 370; *Vogler* v. *Geiss* (1879) 51 Md. 407. Logically, it is a contradiction in terms to hold that there has been an "abandonment" of a right which one is estopped to set up, and the correct rule seems to be that it is estoppel and not abandonment which defeats the right of the dominant owner. *Scott* v. *Moore* (1900) 98 Va. 668, 37 S. E. 342; *cf. Vogler* v. *Geiss, supra.* It is submitted, therefore, that the majority of the court in the principal case erred in finding that the right was destroyed by the defendant's non-user, in the absence of evidence of any act of the plaintiff sufficient to work an estoppel.

STATUTES—SUMMARY PROCEEDINGS—REMEDY OF REVERSIONER AGAINST LESSEE OF LIFE TENANT.—A life tenant leased the premises to the defendant for ten years. Two years later the life tenant died, but the defendant held over. In an action brought by the remainderman, after the giving of notice, to remove the defendant by summary proceedings, *held,* one judge dissenting, that such an action will not lie under